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RECENT CASES.

CARRIERS—INJURY TO PASSENGERS—NEGLIGENCE OF PASSENGER—QUESTION FOR JURY.—*CLERE v. MORGAN'S L. & T. R. Co.*, 31 So. 886 (La.).—Plaintiff's arm, projecting beyond the window sill of a moving steam railway car, was injured by being struck by the swinging door of a freight car standing on a switch of the defendant company. *Held*, that plaintiff was not as a matter of law negligent, but that the question of negligence was for the jury, to be determined from the evidence, all the circumstances of the case being taken into consideration.

It is the prevailing rule that it is negligence *per se* for a passenger to protrude his arm beyond the outer edge of a window on a moving steam railway car. *Todd v. Old Colony R. Co.*, 7 Allen 207; *Georgia Pac. R. Co.*, v. *Underwood*, 90 Ala. 49; *Indianapolis R. Co. v. Rutherford*, 29 Ind. 82; *Dun v. Seaboard R. Co.*, 78 Va. 645. An attempt has been made to distinguish between steam and street railway cars as regards negligence of this nature. *Summers v. Crescent City R. Co.*, 34 La. Ann. 139; *Miller v. St. Louis R. Co.*, 5 Mo. App. 471; but such distinction has been severely criticised. 2 *Wood's Railway Law*, pp. 1107, 1108; *Georgia Pac. R. Co. v. Underwood*, 90 Ala. 51. Seemingly the only decision which opposes the prevailing view and supports the present case is *Spencer v. M. & P. C. R. R. Co.*, 17 Wis. 487. *Chicago R. Co. v. Pondrom*, 51 Ill. 333, and *Quinn v. So. C. R. Co.*, 29 S. C. 381, often said to support the Wisconsin case, have been distinguished, and so are not authority on the issue here involved.

CARRIERS—TAKING PASSENGER BEYOND DESTINATION—DAMAGES.—*SMITH ET UX.*, v. *WILMINGTON & W. R. Co.*, 41 S. E. 481 (N. C.).—Plaintiff purchased tickets and boarded a train to go to a certain crossing, where there was no station. The conductor was unable to signal the engine in time and the train was finally stopped at a considerable distance beyond plaintiff's destination. At the time she left the train it was raining and the plaintiff was exposed to the storm. She was afterwards taken ill, but her physician testified that she would have been ill anyway. Evidence of mental suffering was excluded. *Held*, that a judgment of non-suit was properly ordered. *Douglas and Clark, J. J., dissenting.*

The majority opinion in this case appears to controvert the settled rule that carrying a passenger beyond his destination is actionable negligence. *Thompson, Carriers*, p. 568; *Code (N. C.)*, Sec. 1963; *Raben v. R. R.*, 75 Iowa 579; *Bucher v. R. R.*, 98 N. Y. 128. Carriers are bound to stop, at the representation of their agent. *Hull v. R. R.*, 66 Tex. 619. Increased risk of injury resulting from condition of health must be borne by the passenger. *Pullman Co. v. Barker*, 4 Col. 344. The English rule also holds that illness resulting from exposure is not a proximate result of the carrier's negligence. *Hobbs v. R. R.*, L. R. 10 Q. B. 111. In these cases the action is considered as founded on contract and not upon tort, but the latter view has been taken by several courts where the former authority is severely criticized. *R. R. v. Eaton*, 94 Ind. 474; *Brown v. R. R.*, 54 Wis. 342.